

1 KING, HOLMES, PATERNO & BERLINER, LLP
HOWARD E. KING, ESQ., STATE BAR NO. 77012
2 STEPHEN D. ROTHSCHILD, ESQ., STATE BAR NO. 132514
ROTHSCHILD@KHPBLAW.COM
3 1900 AVENUE OF THE STARS, 25TH FLOOR
LOS ANGELES, CALIFORNIA 90067-4506
4 TELEPHONE: (310) 282-8989
FACSIMILE: (310) 282-8903

5 Attorneys for Plaintiff and Counter-
6 Defendant GLENN DANZIG

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10
11 GLENN DANZIG, an individual,
12 Plaintiff,

13 vs.

14 GERALD CAIAFA, an individual;
CYCLOPIAN MUSIC, INC., a
15 corporation; and DOES 1 through 10,
inclusive,

16 Defendants.
17

CASE NO. CV14-02540 RGK-RZx
Hon. R. Gary Klausner, Courtroom 850

**DECLARATION OF PLAINTIFF
GLENN DANZIG FILED IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

Date: March 23, 2015
Time: 9:00 a.m.
Ctmm.: 850

Action Filed: April 3, 2014
Trial Date: May 5, 2015

18
19
20 AND RELATED COUNTERCLAIM.
21

22 I, Glenn Danzig, declare:

23 1. I have personal knowledge of the matters below and could and would
24 testify competently to them if asked.

25 **A. I Form the Misfits, Write all of the Misfits Songs, Create All of the**
26 **Misfits and Skull Logos and Artwork, and Perform as the Misfits'**
27 **Lead Singer**
28

1 2. I formed the band the Misfits in 1976. I named the band the Misfits
2 after the 1961 Marilyn Monroe film of the same name.

3 3. About a year later I replaced the Misfits bass player with Gerald Caiafa,
4 who performed under the name “Jerry Only.”

5 4. I wrote all of the lyrics and composed all of the music for all of the
6 Misfits’ songs.

7 5. I was the Misfits’ lead singer.

8 6. I created the unique Misfits font (which Jerry renamed the “horror
9 font”), the Misfits Skull (which Jerry renamed the “Fiend Skull”), and Misfits album
10 artwork. I designed the Skull based on artwork related to an old, public domain
11 movie series called “The Crimson Ghost.” (In addition to being a musician, I am a
12 graphic artist. I attended Bergen County Technical School to study commercial art,
13 and I graduated from the New York Institute of Photography with a degree in
14 photography.)

15 7. Attached hereto as Exhibit 6 is a true and correct copy of a photograph
16 of the Misfits performing in or about 1982, while I was a member of the band. The
17 Skull logo is seen on an amplifier on the right side of the picture. The word
18 “Misfits” in the font I designed is seen on the amplifier and on the front of the drum
19 set. We typically used my Skull design as a backdrop during our shows. When the
20 Misfits toured, I often brought materials with me to imprint the Skull design on tee
21 shirts for fans.

22 8. Jerry did not design the Fiend Skull or the unique Misfits font. It was
23 not his idea to name our band the Misfits. He did not write any of our lyrics or
24 music. He had no professional experience as a musician when I invited him to join
25 the Misfits.

26 ///

27 ///

28 ///

B. The 1994 Settlement Agreement Giving Me and the Other Misfits Members Co-Ownership of the Logos and Artwork I Created for the Misfits, Including the Word “Misfits,” the Misfits Font, and the Skull

9. In 1983, the Misfits disbanded. I then formed the band Samhain and, shortly after that, the band Danzig. Samhain and Danzig enjoyed far more success than the Misfits did while we were active. My success with those bands brought renewed attention to and sales of the Misfits’ music.

10. In 1992, Jerry, along with other former members of the Misfits whom he controlled, sued me in *Caiafa, et al. v. Anzalone, et al.*, United States District Court for the Southern District of New York Case Number 1:92-cv-06908 (the “1992 Case”). The lawsuit involved a number of Misfits-related issues, including Jerry’s claim that he had rights in the Misfits name and artwork and designs I had developed for the Misfits.

11. Through my lawyers in the 1992 case, I had settlement discussions with Jerry in 1994 and early 1995.

12. We settled the 1992 case in early 1995 when we entered into the Settlement Agreement dated as of December 31, 1994 with former Misfits members defendant Gerald Caiafa, Paul Caiafa, Frank Licata and Julio Valverde (the “1994 Agreement”), a true and correct copy of which is attached hereto as Exhibit 7. Paragraph 5 of the 1994 Agreement provided that the parties to the agreement, including myself, would co-own “the name and trademarks of the Misfits and all logo(s) and artwork (including all artwork used on Misfits releases for Slash, Caroline or Plan 9 Records) previously associated therewith.”

13. Of course, the Misfits logos and artwork included my Misfits Skull and font designs, which we used on stage, on album covers, and in promotional material.

C. My Use of My Misfits Skull and Font Designs in Commerce

14. I understand that Jerry claims I abandoned use of my Misfits-related

1 designs, including the Skull and the unique font, in the second half of the 1990s and
2 the first few years of the 2000s. I never abandoned use of those designs in
3 commerce. I have used them to sell albums and merchandise throughout the 1980s,
4 1990s, 2000s, and this decade. I received and continue to receive merchandising
5 royalties, record royalties, and publishing income from those sales.

6 15. Attached hereto as Exhibit 8 are true and correct copies of the CD
7 cover, insert and CD "Misfits Walk Among Us." We released that album in 1982.
8 The insert, on the second page of the exhibit, includes an image of my Misfits Skull
9 design. The CD still is available for purchase by consumers on Amazon.com and
10 through other vendors. It also was available for sale throughout the second half of
11 the 1990s and in the 2000s. I received and continue to receive royalties from sales
12 of the album.

13 16. Attached hereto as Exhibit 9 are true and correct copies of the CD
14 cover, insert and CD "Misfits," also known as "Collection I," which my record
15 label, Plan 9, released in 1986. The album cover is an image of my Misfits Skull.
16 The back of the cover, the insert, and the CD itself also include Misfits Skull
17 images. The cover, the back of the cover, and the CD itself also bear the word
18 "Misfits" in the unique font I designed. The CD still is available for purchase by
19 consumers on Amazon.com and through other vendors. It also was available for
20 sale throughout the second half of the 1990s and in the 2000s. I received and
21 continue to receive royalties from sales of the album.

22 17. Attached hereto as Exhibit 10 are true and correct copies of the CD
23 cover, insert and compilation CD "Earth Misfits A.D." which Caroline Records, to
24 which the Misfits sold its sound recordings, but not my underlying compositions
25 embodied thereon or my artwork (including the Misfits Skull and font), released in
26 1995. The album cover bears images of my Misfits Skull. The back of the cover,
27 the insert, and the CD itself also include Misfits Skull images. The cover, the back
28 of the cover, and the CD itself also bear the word "Misfits" in the unique font I

1 designed. The CD still is available for purchase by consumers on Amazon.com and
2 through other vendors. It also was available for sale throughout the second half of
3 the 1990s and in the 2000s. I received and continue to receive royalties from sales
4 of the album.

5 18. Caroline Records re-released "Misfits" Collection I in 1995. The re-
6 release is still available for purchase by consumers on Amazon.com and through
7 other vendors. It was available for sale throughout the second half of the 1990s and
8 in the 2000s. I received and continue to receive royalties from sales of the album.

9 19. Attached hereto as Exhibit 11 is a true and correct copy of the CD
10 cover for the Misfits 1989 compilation release "Misfits Legacy of Brutality." It
11 bears my Skull and Misfits font designs. The CD still is available for purchase by
12 consumers on Amazon.com and through other vendors. It also was available for
13 sale throughout the second half of the 1990s and in the 2000s. I received and
14 continue to receive royalties from sales of the album.

15 20. Attached hereto as Exhibit 12 are true and correct copies of the vinyl
16 album cover and album for the Misfits 1995 compilation release known as "Misfits
17 Collection II." The front and back of the cover bear my Misfits Skull design. True
18 and correct copies of the covers, insert and CD for the CD version of that album are
19 attached hereto as Exhibit 13. The CD version features the Misfits Skull on the
20 front and back covers and on the CD itself. The album and the CD still are available
21 for purchase by consumers on Amazon.com and through other vendors. They also
22 were available for sale throughout the second half of the 1990s and in the 2000s. I
23 received and continue to receive royalties from sales of the album.

24 21. My merchandiser in 1995, Brockum, sold products bearing the image
25 of the Legacy of Brutality cover art, including decals. Attached hereto as Exhibit 14
26 is a true and correct copy of a January 8, 1996 design approval form from Brockum
27 showing Brockum's approval of the decal and that the decal was to be released as
28 soon as possible.

22. After Brokum, my merchandisers in the second half of the 1990s, Wild Oats and Nice Man sold tee shirts and other items on my behalf bearing the image of the Misfits Skull. I understand that Blue Grape's merchandising of products on my behalf bearing the Misfits Skull is addressed in the Declaration of Felix Sebacious.

23. Attached hereto as Exhibit 15 is a true and correct copy of a screen shot of an eBay listing for "THE MISFITS – Limited Edition oop 4-Discus Coffin Box rare NEW," along with pictures of the contents of the actual box set. We put the box set out February 1996. It included four CDs, a booklet, and a Misfits pin with the Misfits Skull image. The pictures included in Exhibit 15 include the pin. I received royalties from sales of the set.

24. Attached hereto as Exhibit 16 are true and correct copies of the CD cover, insert CD of the 1997 re-release of the Misfits' 1982 album "Misfits Evilive." The album cover bears images of my Misfits Skull. The back of the cover also includes Misfits Skull images. The cover, the back of the cover, album art and the CD itself also bear the word "Misfits" in the unique font I designed. The CD still is available for purchase by consumers on Amazon.com and through other vendors. I received and continue to receive royalties from sales of the album.

25. Attached hereto as Exhibit 17 is a true and correct copy of an eBay listing for a "vtg 90s' 1998 THE MISFITS long slv Punk t-shirt Rare Danzig M L Horror Business." I recognize the t-shirt as a design that my merchandiser in 1998 sold on my behalf.

**D. Consumer Confusion that I am the Source of Defendant
Cyclopien Music, Inc.'s ("Cyclopien") Misfits-Related
Products**

26. Misfits fans generally associate me with the Misfits and Misfits-related products. I know this for many reasons. Fans frequently approach me when I am going about my daily business and at public appearances to talk about the Misfits. Fans at shows always ask me to play my Misfits songs.

1 27. My name, reputation and fan base often are used to sell defendants'
2 merchandise, and consumers associate me with defendants' merchandise. Attached
3 hereto as Exhibit 18 are true and correct copies of some of the many current
4 examples found on Ebay.com in the few days before March 2, 2015:

- 5 a. "Vintage 2002 THE MISFITS concert tour black shirt GLENN
6 DANZIG skull logo SMALL." The tag on the shirt identifies it
7 as a Cyclopien product, despite its being sold as associated with
8 me.
- 9 b. Misfits listing for "Misfits crimson ghost rubber bracelet, -c rwb
10 56 samhain danzig glenn." The picture identifies Cyclopien as
11 the source of the bracelet, despite its being sold as associated
12 with me.
- 13 c. "MISFITS FIEND BELT BUCKLE SILVER HORROR
14 HARDCORE PUNK GLENN DANZIG HEAVY METAL." The tag identifies Cyclopien as the source of the buckle, despite
15 its being sold as associated with me.
- 16 d. "THE MISFITS Skulls Logo 50" x 60" Micro Fleece Throw
17 Blanket Danzig Punk Rock." The packaging on the blow-up of
18 the picture of the product identifies Cyclopien as the product's
19 source, despite its being sold as associated with me.
- 20 e. "67010 The Misfits – Crimson Ghost Skull Punk Horror Danzig
21 Fiend – BELT BUCKLE." The imprint on the inside of the
22 buckle identifies it as a Cyclopien product, despite its being sold
23 as associated with me.
- 24 f. "15266 Misfits Crimson Ghost Skulls Red Logo Danzig Metal
25 Punk Band Sticker Decal." The blowup following the eBay
26 listing shows the decal as a Cyclopien product, despite its being
27 sold as associated with me.
- 28

11 28. The statements of Jerry and his lawyers in their motions and in widely
12 released statements to the press and interviews, that I filed this lawsuit to take unfair
13 advantage of Jerry's success with his version of the Misfits, are false. Jerry's entire
14 career is based on a band, a name, logos, artwork and music that I created and
15 designed. In addition, Jerry constantly refers to me in an effort to capitalize on the
16 worldwide success of my band, Danzig.

21 I declare under penalty of perjury under the laws of the United States that the
22 foregoing is true and correct.

~~See Attached Signature~~
Glenn Danzig

- 1 g. "15739 The Misfits Danzig Horror Punk Rock Heavy Metal
2 Skull Sticker / Decal." The blowup following the eBay listing
3 shows the decal as a Cyclopien product, despite its being sold as
4 associated with me. (In fact, I created the artwork depicted in the
5 decal, as I did all of the other artwork at issue in this case.)
- 6 h. "MISFITS HEAD KNOCKERS NECA 2002 MIB crimson ghost
7 danzig walk among us." Notwithstanding the use of my name,
8 Neca distributes Cyclopien product, not my product. (In fact, I
9 created the artwork depicted in the decal, as I did all of the other
10 artwork at issue in this case.)

11 28. The statements of Jerry and his lawyers in their motions and in widely
12 released statements to the press and interviews, that I filed this lawsuit to take unfair
13 advantage of Jerry's success with his version of the Misfits, are false. Jerry's entire
14 career is based on a band, a name, logos, artwork and music that I created and
15 designed. In addition, Jerry constantly refers to me in an effort to capitalize on the
16 worldwide success of my band, Danzig.

17 29. At no time did I consent to Jerry registering trademarks in any of my
18 designs. Nor did he give me any notice that he had done so. As soon as I learned
19 that Jerry had registered and was continuing to try to register trademarks in my
20 designs I retained counsel to challenge those fraudulent registrations.

21 I declare under penalty of perjury under the laws of the United States that the
22 foregoing is true and correct.

23 Executed on March 2, 2015 at Los Angeles, California.

24
25
26 
27 Glenn Danzig
28

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2015, I electronically filed the foregoing
**DECLARATION OF PLAINTIFF GLENN DANZIG FILED IN SUPPORT
OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT** with the Clerk of the Court by using the CM/ECF
system. I certify that all participants in the case are registered CM/ECF users and
that service will be accomplished by the CM/ECF system.



Yvette T. Toko